THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22348 OF 2006

DATED:30-10-2006

BETWEEN

K.Lingaiah and another

… Petitioners

and

The District Collector, Karimnagar, Karimnagar District and another.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22348 OF 2006

ORDER:

The first petitioner and the second petitioner are allegedly owners and possessors of agricultural land admeasuring Acs.2.00 in survey No.111/A and Acs.1.00 in survey No.111/A of Bonala Village, Sircilla Mandal of Karimnagar District respectively. They filed the present writ petition seeking a writ of Mandamus declaring the action of the respondents in acquiring their lands under Section 4 of the Land Acquisition Act, 1894 (the Act, for brevity) and dispensing with the enquiry under Section 5-A of the Act, as illegal, arbitrary and unconstitutional.

Learned counsel for the petitioners contends that when the land is sought to be acquired for providing house sites to weaker sections under Integrated Novel Development In Rural Areas & Model Municipal Areas (INDIRAMMA) Scheme, there is no warrant for assuming urgency and invoke the power under sub-section (4) of Section 17 of the Act to dispense with the enquiry under Section 5-A of the Act. **Per contra**, learned Assistant Government Pleader for Revenue (Land Acquisition) opposed the writ petition. He submits that the acquisition of land for providing house sites to weaker sections is of emergent nature and therefore, there is no illegality in dispensing with enquiry under Section 5-A of the Act.

In **S.Yedukondalu v District Collector, West Godavari District**[1], this Court, after referring to a catena of decisions, while dealing with the question of dispensing with the enquiry under Section 5-A of the Act, held that there is always urgency for acquiring land for providing house sites to weaker sections and therefore, enquiry under Section 5-A of the Act can be dispensed with. The relevant observations are as under.

The purport of sub-section (2) of Section 17 as amended by A.P.Legislature, in simple terms is that in certain cases, *inter alia,* for construction of a building in a village for the common use of inhabitants of the village and/or for provision of dwelling house for the poor, the Collector can always acquire immediate possession of the land. This necessarily would mean that after issue of notification under Section 4(1) of the Act, the District Collector or the State have to invoke the powers under sub-section (4) of Section 17 of the Act and then take possession under sub-section (2) of Section 17 of the Act. Thus, the Legislature itself has visualized that whenever there is an acquisition for provision of house sites or dwelling house to the poor, the District Collector can always legitimately invoke the power under Section 17(4) of the Act and dispense with enquiry under Section 5-A of the Act. In such a situation, if enquiry under Section 5-A of the Act is mandated, the same would be ignoring sub-section (2) of Section 17 of the Act and amounts to issue of Mandamus contrary to law. Such a prerogative writ cannot be issued to any public authority either to ignore law or act contrary to law. An analysis of the decisions cited by the learned Assistant Government Pleader also support the view that whenever there is a need for acquiring the land for providing house sites to the weaker sections, there is always urgency and enquiry under Section 5-A of the Act can be dispensed with.

Following the same, the writ petition is also dismissed. No costs.

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(V.V.S.RAO,J)

30.10.2006
pln

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[1] 2006 (5) ALT 818